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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,658	11/09/2000	Nicholas Sheppard Bromer		3157

7590

03/07/2003

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EXAMINER

DRUAN, THOMAS J

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 03/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/708,658

Applicant(s)

BROMER, NICHOLAS SHEPPARD

Examiner

Thomas J. Druan, Jr.

Art Unit

3724

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 10 February 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☒ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____


Allan N. Shoap
Supervisory Patent Examiner
Group 3700

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See Continuation Sheet

Continuation of 5. does NOT place the application in condition for allowance because: the meaning of the word "specular" as used in Applicant's specification does not appear to be in agreement with Applicant's exhibit or submission (in particular, the Bennett and Mattsson reference). In addition, the relied-upon values based on the submission are questionable due to extrapolation beyond validated measurements, and thus it is unknown if Applicant is arguing facts or arguing Applicant's opinion. Applicant first defines "specular" to mean that at least some reflected image is visible on a surface, but does not require that the surface be polished. In terms of surface roughness, Applicant states that, "If a surface is specular it is also smooth to less than a wavelength of light, which is about $0.5\ \mu\text{m}$." The Communication of Paper No. 14, filed 26 February 2003, states that, "The range extending from zero to $0.5\ \mu\text{m}$ includes the range of 'specular,' which turns out to be zero to $0.05\ \mu\text{m}$ in reality as shown by the Bennett and Mattsson book." These statements taken together are unclear, as it is not known if values between $0.05\ \mu\text{m}$ and $0.5\ \mu\text{m}$ are considered "specular" as defined in the specification, or if the meaning of "specular" is now or has always been only between zero and $0.05\ \mu\text{m}$. The Bennett and Mattsson book introduces a very different definition of "specular" than the specification as originally filed. Therefore, the accuracy of Applicant's specification with respect to the term "specular" is now in question. As Applicant points out, 37 CFR 1.56(a) states that information should be submitted only if it is material to patentability, and ascertaining the definition of "specular" is certainly material to the patentability of Applicant's invention. Therefore, the submission (Bennett and Mattsson) is still considered not timely filed as per 37 CFR 1.97. Furthermore, Applicant's 37 CFR 1.132 Declaration submitted 26 February 2003 is not considered timely since it was submitted after a final rejection (see MPEP 716.01). On the question of Applicant claiming something outside the range of the specification and claims, Applicant replied that the "whereby" clauses of claim 1 are non-limiting; however, it is clear that the "whereby" clauses were meant to further define, or limit, the surface of claim 1, and clearly there is inconsistency between Bennett and Mattsson's definition of specular and that of something on the order of a wavelength of light. Further, one could not reasonably interpret the term "specular" in claim 1 to mean the intersection of the range of "on the order of a wavelength of light" and the range disclosed in a submission that was found after Final Rejection. The question concerning the term "microscopically straight" was included in the reasons for not entering the amendment, and remains a valid issue. In regards to anything being microscopically straight or flat, no specific range is disclosed as being "microscopic," and any relation to specularity, flatness, or straightness is unclear.

Continuation of 10. Other: A PTO-892 is submitted herewith to provide references that disclose edge straightness (USPN 6431800, column 3, lines 34-43), and blade finishes (USPN 5048191).